

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

UNITED STATES OF AMERICA, <i>Plaintiff,</i>	§ § § § § § § § § §	CIVIL ACTION NO. 7:20-cv-00077
v.		
0.227 ACRE OF LAND, MORE OR LESS, SITUATE IN STARR COUNTY, STATE OF TEXAS, JORGE MONTALVO, <i>et al.</i> , <i>Defendants.</i>		

**UNITED STATES OF AMERICA’S UNOPPOSED MOTION TO DISMISS THE  
UNKNOWN HEIRS OF FIDEL GARCIA AS UNNECESSARILY OR IMPROPERLY  
JOINED PARTY DEFENDANTS**

Plaintiff, United States of America (“United States”), through the undersigned Assistant United States Attorney, moves pursuant to Rule 71.1(i)(2) of the Federal Rules of Civil Procedure, to dismiss the UNKNOWN HEIRS OF FIDEL GARCIA as unnecessarily or improperly joined party defendants. In support, the United States shows the following:

**I. BACKGROUND**

1. On March 20, 2020, pursuant to the Declaration of Taking Act (40 U.S.C. § 3114), and Federal Rule of Civil Procedure 71.1, the United States filed a “Complaint in Condemnation” (Dkt. No. 1) and a “Declaration of Taking” (Dkt. No. 2) to acquire a perpetual road and utility easement in real property, identified as Tract RGV-RGC-R1107E, for purposes of the border fence project.<sup>1</sup>

2. The parent parcel of Tract RGV-RGC-R1107E consists of a 42.093 acre tract in Porcion No. 61, Ancient Jurisdiction of Mier, Mexico, now Starr County, Texas (hereafter “Subject Property”).<sup>2</sup> The United States identified the UNKNOWN HEIRS OF FIDEL GARCIA

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<sup>1</sup> Schedules “C”, “D”, and “E”, Dkt Nos. 1-1 at 6-13; 2-1 at 6-13.

<sup>2</sup> Dkt. Nos. 1-1 at 6; 2-1 at 6.

as having an interest in just compensation for the acquisition of Tract RGV-RGC-R1107E.<sup>3</sup> However, based on the title history for the Subject Property, the United States inadvertently or improperly named the UNKNOWN HEIRS OF FIDEL GARCIA as having an interest in this case.

3. FIDEL GARCIA died in March 1969 in McAllen, Hidalgo County, Texas<sup>4</sup>; he was survived by his only wife, Sara Gonzalez Garcia<sup>5</sup>, and their six children: (1) Tomacita Garcia, (2) Maria L. Garcia, (3) Oscar G. Garcia, (4) Alfredo Garcia, (5) Fidel Garcia, Jr., and (6) Zulema G. Castaneda.<sup>6</sup> Other than Olivia Garcia, who predeceased FIDEL GARCIA in May 1933<sup>7</sup>, FIDEL GARCIA did not have or adopt any other children as his own.<sup>8</sup> There are no probate records on file or title evidence on record to establish that an administration of FIDEL GARCIA's estate was ever opened.<sup>9</sup>

4. The title history of the Subject Property, in relevant part, indicates that in April 1978, "Sara G. Garcia, widow of Fidel Garcia," conveyed "Tract 2: [s]ixty (60) acres of land, more or less, in Porcion 61" in equal shares to her children—the sole heirs and descendants of FIDEL GARCIA—Tomacita Garcia, Maria L. Garcia, Oscar G. Garcia, Alfredo Garcia, Fidel Garcia, Jr., and Zulema G. Castaneda, by warranty deed.<sup>10</sup> Accordingly, any ownership interest Sara G. Garcia inherited from FIDEL GARCIA in Porcion 61 had then been conveyed to their six children.

5. In June 2002, a state court proceeding in Starr County, Texas, judicially partitioned: "Tract B: 42.039 acres of land forming a part of portion of No. 61, Ancient Jurisdiction of Mier,

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<sup>3</sup> Schedule "G", Dkt. Nos. 1-1 at 17; 2-1 at 17.

<sup>4</sup> Gov't Ex. 1 at 1, ¶ 2 (Affidavit of Facts Concerning the Identity of the Heirs of Fidel Garcia, Sr., Deceased).

<sup>5</sup> *Id.*, ¶ 3; Gov't Ex. 2 at 1 (Warranty Deed, Doc. 1978-97120, Vol. 412, P. 524, Official Records of Starr Cnty., TX).

<sup>6</sup> Gov't Ex. 1 at 1-2, ¶ 4; Gov't Ex. 2 at 1.

<sup>7</sup> Olivia Garcia, daughter of FIDEL and Sara G. Garcia, died in May 1933 at age 9. Gov't Ex. 1 at 1, ¶ 4; Gov't Ex. 3 (Death Certificate of Olivia Garcia).

<sup>8</sup> Gov't Ex. 1 at 2, ¶ 5.

<sup>9</sup> *See also id.* at 2, ¶¶ 8-9 (Eloy Garcia, grandson of FIDEL GARCIA, cannot confirm that FIDEL GARCIA died testate or that there was an administration of FIDEL GARCIA's estate).

<sup>10</sup> Gov't Ex. 2 at 1.

Mexico, now Starr County, Texas,” (*i.e.* the Subject Property) from Tract 2: 60 acres of land owned by the six heirs of FIDEL GARCIA.<sup>11</sup> In said proceeding, the Subject Property was allotted “in equal undivided one-fifth parts” to Tomacita Garcia, Maria L. Garcia, Alfredo Garcia, Zulema G. Castaneda, and Fidel Garcia, Jr.<sup>12</sup>

6. In November, 2002, Maria L. Garcia conveyed her 1/5th “title and interest” in the Subject Property to sister, Tomacita Garcia by gift deed<sup>13</sup>; also, Zulema C. Castaneda conveyed her 1/5th interest in the Subject Property “in equal undivided one-third (1/3<sup>rd</sup>) parts” to her children: Leandro David Castaneda, Irma C. Enriquez, and Gloria E. Koepke by warranty deed.<sup>14</sup>

7. In August 2005, Zulema G. Castaneda and Alfredo Garcia, along with Leandro David Castaneda, Irma C. Enriquez, and Gloria E. Koepke, conveyed to **Jorge Montalvo** and **Elsa Montalvo**, “all of an undivided four-fifths” interest in and to the Subject Property’s surface rights by warranty deed.<sup>15</sup>

8. Fidel Garcia, Jr. died testate in June 2005 in Edinburg, Hidalgo County, Texas<sup>16</sup>; however, his last will and testament was not probated.<sup>17</sup> In January 2016, Fidel Garcia, Jr.’s heirs-at-law conveyed to **Jorge Montalvo** and **Elsa Montalvo**, “[a]ll of an undivided one-fifth” interest in and to the Subject Property’s surface rights by warranty deed.<sup>18</sup>

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<sup>11</sup> Gov’t Ex. 4 at 1, 3, 14 (Final Judgment of Partition of Real Property, Doc. 2002-224123, Vol. 937, P. 1, Official Records of Starr Cnty., TX).

<sup>12</sup> *Id.* at 14, ¶ 4. Oscar Garcia “renounce[d] and relinquishe[d] all of his claims, interests and title” to the Subject Property (Tract B) in favor of his five siblings. *Id.*

<sup>13</sup> Gov’t Ex. 5 at 1-4 (Deed of Gift, Doc. 226904, Vol. 949, P. 264, Official Records of Starr Cnty., TX).

<sup>14</sup> Gov’t Ex. 6 at 1-4 (Correction Warranty Deed, Doc. 226905, Vol. 949, P. 269, Official Records of Starr Cnty., TX).

<sup>15</sup> Gov’t Ex. 7 at 1-2 (Warranty Deed, Doc. 249708, Vol. 1059, P. 669, Official Records of Starr Cnty., TX).

<sup>16</sup> Gov’t Ex. 8 at 1 (Death Certificate of Fidel Garcia, Jr.); Gov’t Ex. 9 at 1, ¶ 2; at 2, ¶ 8 (Affidavit of Facts Concerning the Heirs of Fidel Garcia, Jr., Deceased).

<sup>17</sup> Gov’t Ex. 9 at 2, ¶ 9.

<sup>18</sup> Gov’t Ex. 10 at 1-2 (Replacement Warranty Deed, Doc. 329901, Vol. 1478, P. 525, Official Records of Starr Cnty., TX).

9. The United States has identified Jorge Montalvo and Elsa Montalvo as interested parties in this case<sup>19</sup> and each has made an appearance.<sup>20</sup>

## **II. GROUNDS FOR DISMISSAL**

10. The UNKNOWN HEIRS OF FIDEL GARCIA have no interest in just compensation for the United States' acquisition of Tract RGV-RGC-R1107E because all heirs of FIDEL GARCIA are now known, and their respective interest in the Subject Property was conveyed to Defendants, Jorge Montalvo and Elsa Montalvo prior to the commencement of this action.

11. Federal Rule of Civil Procedure ("Rule") 71.1 governs "proceedings to condemn real and personal property by eminent domain." Fed. R. Civ. P. 71.1(a). Rule 71.1(i)(2) provides that, "[t]he Court may at any time dismiss a defendant who was unnecessarily or improperly joined." *Id.* 71.1(i)(2); *see also* Note to Subdivision (i) ("In line with Rule 21, the court may at any time drop a defendant who has been unnecessarily or improperly joined as where it develops that he has no interest.").

12. The United States respectfully moves the Court to dismiss the UNKNOWN HEIRS OF FIDEL GARCIA as party defendants because (1) all heirs of FIDEL GARCIA have now been identified; (2) their respective interests in the Subject Property were conveyed to Defendants, Jorge Montalvo and Elsa Montalvo prior to the commencement of this action; and (3) Defendants, Jorge Montalvo and Elsa Montalvo claim, with supporting deed records, claim they are exclusively entitled to the just compensation owed for the acquisition of Tract RGV-RGC-R1107E. Therefore, the UNKNOWN HEIRS OF FIDEL GARCIA are unnecessary and improper parties in this action, and dismissal is proper under Rule 71.1(i)(2).

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<sup>19</sup> Schedule "G", Dkt. Nos. 1-1 at 17; 2-1 at 17.

<sup>20</sup> Dkt. Nos. 11 & 12.

**PRAYER**

The United States prays the Court grants this motion and pursuant to Federal Rule of Civil Procedure 71.1(i)(2), dismisses Defendants, the UNKNOWN HEIRS OF FIDEL GARCIA, without prejudice, as unnecessarily or improperly joined party defendants.

Respectfully submitted,

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Southern District of Texas

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**CERTIFICATE OF CONFERENCE**

I hereby certify that on May 29, 2020, I conferred to Defendants Jorge and Elsa Montalvo about this motion and both claim they are the exclusive the owners of the Subject Property and are unopposed to the dismissal of the Unknown Heirs of Fidel Garcia.

By: s/Baltazar Salazar  
**Baltazar Salazar**  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2020, a true and correct copy of the foregoing document  
by regular mail to all interested parties in this case.

By: *s/Baltazar Salazar*  
**Baltazar Salazar**  
Assistant United States Attorney